

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of )  
 )  
BROWNING FERRIS INDUSTRIES OF )  
ILLINOIS )  
Licensee of Conventional Industrial/Business Pool )  
Radio Service Station KAT277, Chicago, Illinois )  
 )  
AND )  
 )  
CHAMPION COMMUNICATION SERVICES, )  
INC. )  
Licensee of Conventional Industrial/Business Pool  
Radio Service Station WPSK972, Chicago, Illinois

**MEMORANDUM OPINION AND ORDER**

**Adopted: June 24, 2003**

**Released: June 26, 2003**

By the Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau:

**I. INTRODUCTION**

1. This *Memorandum Opinion and Order* proposes to modify the captioned license of Champion Communication Services, Inc. (Champion) to replace the frequency pair 472/475.9625 MHz in Chicago, Illinois (“the channel”), with one of three frequency pairs in the 470-512 MHz band. We propose this modification to address an interference dispute resulting from an apparent error in the Commission’s licensing database that allowed each of the captioned licensees to be authorized to use the same channel, at the same transmitter site, and for ninety or more mobile units, which ordinarily qualifies for exclusive use.<sup>1</sup>

**II. BACKGROUND**

2. Browning Ferris Industries of Illinois (BFI) previously had an authorization to operate on the channel that expired on November 6, 2000. In January 2001, after BFI’s late-filed renewal application was dismissed, the Commission’s licensing database was apparently updated to indicate that the channel was available for reassignment even though BFI filed a timely

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<sup>1</sup> See 47 C.F.R. § 90.313(a)(2).

Petition for Reconsideration (Petition) of the dismissal of its renewal application.<sup>2</sup> On February 22, 2001, Champion filed an application for an authorization to operate on the channel.

3. We granted BFI's Petition on March 2, 2001, along with a waiver regarding acceptance of the late-filed renewal application.<sup>3</sup> Thereafter, on March 26, 2001, we granted BFI's renewal application. On June 6, 2001, we granted Champion a license to operate on the channel.

4. On December 19, 2002, BFI filed an informal request under Section 1.41 of the Commission's Rules<sup>4</sup> to revoke Champion's captioned license.<sup>5</sup> BFI avers that because Champion's station was authorized at the same location where BFI's license was reinstated for exclusive use, Champion's license grant is either a ministerial error or contrary to the *BFI Grant Letter*.<sup>6</sup> Furthermore, BFI states that Champion's operation of Station WPSK972 has caused significant interference to BFI's operation of Station KAT277; therefore, BFI requests that the Commission revoke Champion's authorization for Station WPSK972.<sup>7</sup> On February 12, 2003, Champion opposed the BFI Request, averring that BFI failed to demonstrate that Champion's grant was the result of a ministerial error.<sup>8</sup> Further, the Champion Objection states that BFI did not show that the license grant to Station WPSK972 violated any provisions of the Communications Act of 1934, as amended, or the Commission's Rules.<sup>9</sup> Finally, Champion states that BFI did not provide evidence that Champion's operation of Station WPSK972 would cause harmful interference to BFI's Station KAT277.<sup>10</sup> On February 26, 2003, BFI replied that the grant of the license for Station WPSK972—after the issuance of an exclusive use license to BFI—at the same location as BFI, was in direct conflict with Section 90.313 of the Commission's Rules.<sup>11</sup> BFI opines that the captioned grant to Champion was a ministerial error and again requests license revocation.<sup>12</sup>

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<sup>2</sup> Letter from John Larsen, Operations Manager, BFI Melrose Park, to Federal Communications Commission (dated Feb. 6, 2001).

<sup>3</sup> Letter from Mary Shultz, Chief, Licensing and Technical Analysis Branch, Public Safety and Private Wireless Division, to BFI (Mar. 3, 2001) ("*BFI Grant Letter*").

<sup>4</sup> 47 C.F.R. § 1.41.

<sup>5</sup> Informal Request for License Revocation, filed by BFI on December 19, 2002) (BFI Request).

<sup>6</sup> *Id.* at 3-4.

<sup>7</sup> *Id.*

<sup>8</sup> Objection to Informal Request for License Revocation, filed by Champion on February 12, 2003 (Champion Objection), at 2.

<sup>9</sup> *Id.* at 2-3.

<sup>10</sup> *Id.* at 3.

<sup>11</sup> Reply to Objection to Informal Request for License Revocation, filed by BFI on February 26, 2003 (BFI Reply), at 3.

<sup>12</sup> *Id.*

### III. DISCUSSION

5. BFI is licensed for 233 mobile units on the channel, and therefore the channel is loaded to capacity and BFI has exclusivity. According to Section 90.313(c) of the Commission's Rules,<sup>13</sup> a frequency pair, after it is loaded to capacity, may be reassigned at a distance of 64 km (40 mi) from BFI's site. We find that Champion's authorization on frequency pair 472/475.9625 MHz, at the same coordinates and on the same frequency pair as BFI's station, conflicts with this rule. We conclude that Champion's application should not have been granted to the extent that such action authorized operation within 64 km of a frequency pair that was at full capacity. However, we do not believe that license revocation as requested by BFI is the only course of action available to us.

6. We find that BFI's request to revoke Champion's authorization is unnecessary in the instant case because we have an alternative to BFI's proposed action. We believe that Section 316(a)(1) of the Communications Act of 1934, as amended, provides the appropriate vehicle for resolving this matter.<sup>14</sup> Section 316(a) permits the Commission to modify a station license if the action will promote the public interest, convenience, and necessity.<sup>15</sup> In this connection, we note that proposed modification would serve the public interest by preserving the existing coverage areas of affected parties and preventing harmful interference, while not unduly disrupting Champion's operations. We believe that a modification of the Champion license to replace frequency pair 472/475.9625 MHz is appropriate.

7. Wireless Telecommunications Bureau staff performed a frequency search around Champion's base station coordinates and found three unassigned, available frequency pairs—namely, 476/479.9625, 477/480.5625, and 477/480.7625 MHz. We propose that Champion choose one of these frequency pairs to replace frequency pair 472/475.9625 MHz. The replacement would be subject to coordination with television stations. In particular, we have identified nearby co-channel TV Stations WMTV and WICD on TV Channel 15, and adjacent channel TV Station WNDU on TV Channel 16. If Champion chooses a replacement frequency pair, it would be required to file a modification application directly with the Commission that includes an engineering study showing that Station WPSK972, through its antenna height and effective radiated power (ERP) parameters, protects TV stations in accordance with Sections 90.307 and 90.309 of the Commission's Rules.<sup>16</sup>

8. As discussed above, our grant of Champion's application was in error because the subject frequency pair was already assigned to BFI at full loading capacity. Moreover, it appears that this error occurred because BFI's Petition was not reflected on the database when Champion filed for the channel on February 22, 2001. Thus, we believe that a modification of the subject

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<sup>13</sup> 47 C.F.R. § 90.313(c).

<sup>14</sup> 47 U.S.C. § 316(a)(1).

<sup>15</sup> *Id.*

<sup>16</sup> 47 C.F.R. §§ 90.307, 90.309.

Champion license for Station WPSK972 to replace frequency pair 472/475.9625 MHz with either 476/479.9625, 477/480.5625, or 477/480.7625 MHz, is appropriate to preserve the existing coverage areas of affected parties, to the extent possible, and prevent harmful interference. In accordance with Section 1.87(a) of the Commission's Rules,<sup>17</sup> we will not issue a modification order until Champion has received notice of our proposed action and has had an opportunity to file a protest. To protest the modification, Champion must, within thirty days of the release date of this *Memorandum Opinion and Order*, submit a written statement with sufficient evidence to show that the modification would not be in the public interest. The protest must be filed with the Office of the Secretary, Federal Communications Commission, 445 Twelfth Street, S.W., Room TW-A325, Washington, DC 20554.<sup>18</sup> If Champion consents to the modification, we request that Champion submit its choice for a replacement frequency pair within thirty days of the release date of this *Memorandum Opinion and Order*. If no protest or frequency selection is filed, Champion will have waived its right to protest the modification and will be deemed to have consented to the modification to any of the three replacement frequency pairs and the Commission, on its own motion, will assign a replacement frequency pair for Station WPSK972.

#### IV. CONCLUSION

9. For the reasons stated above, we conclude that the grant of Champion's application was defective to the extent that it authorized operations on frequency pair 472/475.9625 MHz. As a result, we believe that the license grant to Champion for Station WPSK972 was defective with respect to such frequency. Accordingly, we propose the modification of Champion's license for Station WPSK972 by replacing frequency pair 472/475.9625 MHz with either 476/479.9625, 477/480.5625, or 477/480.7625 MHz, the choice of which is to be determined by Champion, subject to coordination with co- and adjacent channel TV stations.

#### V. ORDERING CLAUSES

10. ACCORDINGLY, IT IS ORDERED that, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.41 of the Commission's Rules, 47 C.F.R. § 1.41, that the Informal Request for License Revocation, directed against Station WPSK972, submitted by Browning Ferris Industries of Illinois, on December 19, 2002, IS GRANTED to the extent indicated above and otherwise IS DENIED.

11. IT IS PROPOSED, pursuant to Sections 4(i) and 316(a) of the Communications Act of 1934, 47 U.S.C. §§ 154(i), 316, and Section 1.87 of the Commission's Rules, 47 C.F.R. § 1.87, that the license for Private Land Mobile Radio Service Station WPSK972, Chicago, Illinois, held

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<sup>17</sup> 47 C.F.R. § 1.87(a).

<sup>18</sup> The address for FCC locations should be used only for documents filed by United States Postal Service first-class mail, Express Mail, and Priority Mail. Hand-delivered or messenger-delivered documents for the Commission's Secretary are accepted only at our new location at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. Other messenger-delivered documents, including documents sent by overnight mail (other than United States Postal Service, Express Mail, and Priority Mail) should be addressed for delivery to 9300 East Hampton Drive, Capitol Heights, MD 20743. See FCC Announces a New Filing Location for Paper Documents and a New Fax Number for General Correspondence, *Public Notice*, 16 FCC Rcd 22165 (2001).

by Champion Communication Services, BE MODIFIED by replacing frequency pair 472/475.9625 MHz with either 476/479.9625, 477/480.5625, or 477/480.7625 MHz, the choice of which is to be determined by Champion, subject to coordination with co- and adjacent channel TV stations.

12. IT IS FURTHER ORDERED that this *Memorandum Opinion and Order* shall be sent by certified mail, return receipt requested, to Ms. Kristina Usey, Champion Communication Services, 1610 Woodstead Court, Suite 330, The Woodlands, Texas 77380.

13. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

D'wana R. Terry  
Chief, Public Safety and Private Wireless Division  
Wireless Telecommunications Bureau